



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN

DIRECTOR

August 29, 1994
AO-94-30

Mr. John S. Laughlin
Communications Director
The Foundation for Fair Contracting of Massachusetts
Box 256, State House Station
Boston, MA 02133

Re: Radio advertisement featuring Attorney General

Dear Mr. Laughlin:

This letter is in response to your August 9, 1994 request for an advisory opinion regarding the Foundation for Fair Contracting of Massachusetts' ("the Foundation's") expenditure to buy radio time for public service announcements ("PSAs") taped by Attorney General Harshbarger.

You have stated that the Attorney General taped two PSAs for the Foundation at the end of May 1994. The Foundation sent the PSAs to 95 radio stations in early June and the stations then aired the PSAs free of charge, as a public service. You have concluded that the broadcasts were not aired at times calculated to reach the intended audience, and you would like to expand the broadcast base through a paid media campaign.

Accordingly, the Foundation, a non-profit trust with trustees composed of labor organizations and contractors, has committed \$30,000 to buy radio ad time in September and October of 1994. You have stated that it is important for the ads to be aired during these months since this time period corresponds to the final phase of the outdoor construction season, when you will be able to reach building trades workers as they begin the layoff season. The PSAs, which target public construction prevailing wage and overtime fraud, would reach workers just as they are assessing their financial records at the end of the construction season.

You provided a copy of the PSAs with your request. The PSAs are intended to advise construction workers of their rights under the new fair labor practices law. This law, which now is administered by the Attorney General, became effective on December 1, 1993.

A 30-second PSA features the Attorney General stating: "If you're a construction worker who's been the victim of wage fraud or non-payment of wages, there's a new law that protects your rights. . . . This is Attorney General Scott Harshbarger My office now has the responsibility for wage law enforcement, including prevailing wages on public projects. When an employer pays less than the law requires - that's a crime! . . . For more information on your rights call (617) 727-3456 . . . (A Public Service Announcement paid for by the Foundation for Fair Contracting of Massachusetts)."

An alternative 20-second PSA features the Attorney General stating: "This is Attorney General Scott Harshbarger. My office now has the responsibility for wage law enforcement, including prevailing wages on public projects. When an employer pays less than the law requires - that's a crime! For more information call (617) 727-3456. . . (A Public Service Announcement paid for by the Foundation for Fair Contracting of Massachusetts)."

You have asked two questions. First, is the Foundation's purchase of radio time during the election season consistent with the campaign finance law? Second, will the purchase create the perception that the Foundation's resources are being used for political gain by the Attorney General? I will address your questions separately.

1. Is the expenditure prohibited by the Campaign Finance Law?

M.G.L. c. 55, the campaign finance law, defines a "contribution," in relevant part, as follows:

. . . . a contribution of money or anything of value to an individual [or] candidate
for the purpose of influencing the
nomination or election of said individual or
candidate

In the context of the facts presented in your letter, the expenditure at issue would not appear to be a "contribution." Rather, the expenditure would appear to be primarily intended to inform construction workers, in a timely manner, of their legal rights. It would appear that it is appropriate for the Attorney General to make the announcement, since his agency enforces the new law.

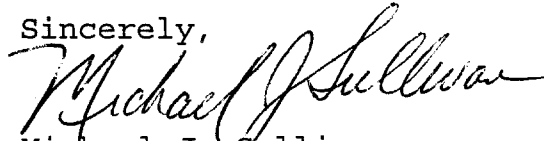
This office has stated that policy-making officials may generally act or speak out in their official capacity to support or oppose a ballot question if in doing so they are acting within the scope of their official responsibilities. See IB-92-02. Similarly, the campaign finance law should not be construed to unnecessarily limit the ability of policy-making officials to make bona fide public service announcements.

2. Would the expenditure create an impression that the Foundation is making a contribution to the Attorney General?

The timing of the ads might lead some listeners to conclude that the Foundation's expenditure is a contribution to the Attorney General's campaign. However, nothing in the facts which you have presented would lead this office to reach a similar conclusion, and nothing in the facts would lead me to conclude that the ad would violate the campaign finance law.¹

This opinion has been rendered solely in the context of M.G.L. c. 55 and has been based solely on the representations made in your letter and in a subsequent telephone conversation with a member of my staff. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,



Michael J. Sullivan
Director

MJS/cp

cc: Thomas Green, Assistant Attorney General

¹ You might wish to avoid even the possible impression of impropriety by altering the ad. Perhaps the ad could be equally effective if revised and read by an individual not seeking election to public office in the coming election.